

AMENDED IN SENATE AUGUST 2, 2010

AMENDED IN SENATE JUNE 28, 2010

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AMENDED IN ASSEMBLY MAY 12, 2010

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## ASSEMBLY BILL

**No. 2396**

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**Introduced by Assembly Member Solorio**

February 19, 2010

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An act to amend ~~Section 11751.5~~ *Sections 11751.5 and 11752.7* of the Insurance Code, relating to workers' compensation insurance.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2396, as amended, Solorio. Workers' compensation insurance: rating organizations: statistical agent.

**Existing**

(1) *Existing* law requires the Insurance Commissioner to designate a licensed rating organization, as defined, as his or her statistical agent to gather and compile workers' compensation insurers' loss and expense experience statistics, and all licensed rating organizations are required to report loss and expense experiences of their member workers' compensation insurers to the statistical agent. Subject to reasonable rules approved by the commissioner, the statistical agent is required to make available those compiled experience statistics to all licensed rating organizations. The statistical agent is authorized to make a reasonable charge to other ratings organizations for the expense incurred by it in

combining, tabulating, and compiling the experience of all workers' compensation insurers.

This bill would require a *designated* statistical agent to conduct public meetings, as provided, would specify records of the *designated* statistical agent that are public, and would specify information ~~prohibited from being considered a public record~~ that the *designated* statistical agent is not required to make available to the public.

(2) Existing law requires a licensed rating organization to make experience rating information contained in its records available to any insurer, insurance agent, or broker that is admitted or licensed to transact workers' compensation insurance in this state. Existing law prohibits a licensed rating organization from entering into an agreement, as specified, that prohibits information services companies in the business of publishing or providing experience rating information immediately prior to September 15, 1989, from continuing to receive and provide experience rating information.

This bill would require a rating organization to provide experience rating information, by electronic means, directly to information service providers in the business of publishing or providing experience rating information immediately prior to September 15, 1989, or to advisory organizations, as defined, on a timely basis, as provided. This bill would require a licensed rating organization to make experience rating information contained in its records available to any information services company that is engaged in furnishing workers' compensation information to insurers, insurance agents, and insurance brokers, admitted or licensed to transact workers' compensation insurance in this state, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 11751.5 of the Insurance Code is
- 2 amended to read:
- 3 11751.5. (a) The commissioner, after notice and hearing, may
- 4 promulgate reasonable rules and statistical plans, which may be
- 5 modified from time to time and which shall be used thereafter in
- 6 the recording and reporting by insurers of their loss and expense
- 7 experience in order that the experiences of all insurers may be
- 8 made available in such form and detail as may be necessary to aid

1 the commissioner in administering the provisions of Article 2  
2 (commencing with Section 11730).

3 (b) The commissioner shall designate a rating organization  
4 licensed under this article as his or her statistical agent to gather  
5 and compile such experience statistics and all licensed rating  
6 organizations shall report the experience of their members to such  
7 designated rating organization. Subject to reasonable rules  
8 approved by the commissioner, such designated rating organization  
9 shall make such experience statistics, when compiled, available  
10 to all licensed rating organizations and may make a reasonable  
11 charge to other rating organizations for the expense incurred by it  
12 in combining, tabulating and compiling the experience of all  
13 workers' compensation insurers.

14 (c) (1) The *designated* statistical agent shall conduct ~~public~~  
15 meetings, *that are open to the public*, with regard to all issues  
16 involving pure premium rates, classifications, rating plans, rating  
17 systems, manual rules, and policy and endorsement forms that are  
18 properly brought before it in any of its committees. This shall apply  
19 to meetings conducted in person and via teleconference. ~~Attendance~~  
20 ~~at telephonically conducted meetings by members of the public~~  
21 ~~shall be made available by the publication by the organization~~ *With*  
22 *respect to meetings held by telephone conference, the designated*  
23 *statistical agent shall, in its meeting notices as set forth below of,*  
24 *publish a call-in number and passcode that members of the public*  
25 *may use to participate in the meeting. Members of the public shall*  
26 *be allowed to electronically record the proceedings of these*  
27 *meetings.*

28 (2) As used in this section, "meeting" includes any congregation  
29 of a majority of the members of any committee that handles the  
30 issues set forth in paragraph (1), as applicable, at the same time to  
31 hear, discuss, or deliberate upon any of those issues. *at which the*  
32 *issues set forth in paragraph (1) are being heard, discussed, or*  
33 *deliberated if a majority of the members of any committee are*  
34 *present.* Notwithstanding the foregoing, a meeting shall not include  
35 any of the following:

36 (A) Individual contacts or conversations between a member of  
37 any committee and any other person, including, but not limited to,  
38 any employee or official of the organization that does not violate  
39 this subdivision.

(B) The attendance of a majority of the members of any committee at an industry conference or other gathering ~~organized by a person or organization other than the statistical agent~~, provided that a majority of the members do not discuss among themselves any item that is within the responsibility of the statistical agent as set forth in this article. *themselves any item that is set forth in paragraph (1).*

(C) The attendance of a majority of the members of any committee at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves any item that is within the responsibility of the *designated* statistical agent as set forth in this article.

(3) (A) A majority of the members of any committee of the *designated* statistical agent shall not, outside a meeting authorized by this article *subdivision*, use a series of communications of any kind, directly or through intermediaries, to ~~discuss, deliberate, deliberate~~ or take action on any item of business that is within the responsibility of the statistical agent as set forth in this article. *any issue set forth in paragraph (1).*

(B) Subparagraph (A) shall not be construed as preventing any employee or officer of the *designated* statistical agent from engaging in separate conversations or communications outside of a meeting ~~authorized by this article~~ *duly noticed by the designated statistical agent* with members of any of its committees in order to answer questions or provide information regarding ~~matters within the responsibility of the statistical agent, if that person does not communicate to members of any of the committees of the board of governors the comments or position of any other member or members of the committees.~~ *any issue set forth in paragraph (1) if that person does not communicate to other members of the committees or the board of governors the comments or positions of any other committee or board member.*

(d) All meetings of the *designated* statistical agent ~~authorized under this article that are open to the public pursuant to subdivision (c)~~ shall comply with the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation of that act.

(e) (1) The *designated* statistical agent shall provide notice of its meetings that are open ~~and to the public pursuant to subdivision~~

(c). This notice and an agenda of items to be discussed shall be provided at least 10 days in advance of the meeting via the *designated* statistical agent's Internet Web site. In addition, members of the public may request notice by regular mail or by e-mail by making a written request to the *designated* statistical agent for notice of meetings that are open ~~and to the public~~ pursuant to subdivision (c).

(2) Notice may be waived or the 10-day period modified, with respect to any particular meeting, ~~by the statistical agent's governing committee or board~~ upon a request submitted to the commissioner stating the need for a modified notice and exigent circumstances requiring waiver of the notice requirement, at least 24 hours in advance of the meeting time set. The approval of the commissioner shall be deemed granted if a written denial of the request for waiver or modification of the notice period is not received ~~at least within 24 hours following the request or four~~ hours prior to the commencement of the meeting to be conducted under the modified notice, *whichever occurs first*.

(3) Notice of a meeting that does not meet the 10-day notice requirement under this subdivision shall be posted on the *designated* statistical agent's Internet Web site and provided by e-mail to members of the public who have made a written request for e-mail notice to the statistical agent of meetings that are open ~~and to the public~~ pursuant to subdivision (c). A summary agenda shall be included in each such notice, but members of any committee may bring additional items of business to any such meeting.

(f) At any meeting where notice is required pursuant to this section, the *designated* statistical agent shall reserve time for public comment on the issues ~~addressed at the meeting set forth in~~ *subdivision (c)*.

(g) Nothing in this section shall be construed to prohibit the committees of the *designated* statistical agent from holding a closed meeting or a closed session of ~~an open and public meeting a meeting that is open to the public pursuant to subdivision (c)~~ to discuss any of the following subjects:

(1) Financial, operational, or personnel information or matters ~~related to the~~ *of the designated* statistical agent.

(2) Nonpublic financial, operational, or personnel information or matters of member insurers of the *designated* statistical agent.

1 (3) Nonpublic information received from ~~regulators or provided~~  
2 *to the commissioner* regarding the *designated* statistical agent or  
3 members of the *designated* statistical agent.

4 (4) Statutory interpretations and other advice received from  
5 legal counsel to the *designated* statistical agent, whether in  
6 connection with litigation or otherwise.

7 (5) Appointment, employment, evaluation of performance, or  
8 dismissal of any employee or vendor that provides products and  
9 ~~services in connection with the operations of the~~ *to the designated*  
10 statistical agent.

11 ~~(6) Deliberations concerning the~~ *The* purchase, sale, exchange,  
12 or lease of real or personal property, ~~including investment property.~~

13 (7) Matters posing a threat of criminal or terrorist activity against  
14 the *designated* statistical agent, its personnel, or its property.

15 ~~(8) Legal, legislative, or regulatory or legislative matters of the~~  
16 *designated* statistical agent, whether potential, pending, or actual;  
17 ~~that are unrelated to the issues in paragraph (1) of subdivision (e).~~

18 (9) Disputes and purported disputes with or involving members  
19 of the *designated* statistical agent.

20 *(10) Disciplinary matters involving a specific member of the*  
21 *designated statistical agent.*

22 *(11) Use of an employer's self-insured data in an experience*  
23 *rating.*

24 ~~(10)~~  
25 *(12) Any other matters as permitted by order or regulation of*  
26 *the commissioner.*

27 (h) With respect to any closed meeting or session held as  
28 permitted by subdivision (g), the *designated* statistical agent shall  
29 do both of the following:

30 (1) Disclose, prior to the closed meeting or the closed session,  
31 the general nature of the item or items to be discussed in the closed  
32 session. The disclosure may take the form of a reference to the  
33 item or items as they are listed by number or letter on the agenda.  
34 In the closed session, the committee may consider only those  
35 matters covered in its disclosure. After any closed session, the  
36 committee shall reconvene in open session prior to adjournment  
37 and shall make any reports, provide any documentation, or make  
38 any other disclosures that may be required consistent with ~~this~~  
39 ~~article~~ *subdivision (c), except with respect to confidential legal or*  
40 *legislative matters directly related to the designated statistical*

1 *agent*. The announcements required to be made in open session  
2 pursuant to this subdivision may be made at the location announced  
3 in the agenda for the closed session, as long as the public is allowed  
4 to be present at that location for the purpose of hearing the  
5 announcement.

6 (2) Provide reports to the commissioner identifying the matters  
7 covered in each such closed meeting or session and the provisions  
8 of subdivision (g) pursuant to which the subject was discussed.

9 (i) Nothing in this section shall require or authorize the  
10 disclosure of names or other information that would constitute an  
11 invasion of privacy or otherwise unnecessarily divulge the  
12 particular facts concerning the closed session or the disclosure of  
13 which is prohibited by state or federal law.

14 (j) The commissioner or his or her designated representative  
15 shall be permitted to attend all meetings of the statistical agent,  
16 specifically including closed meetings and sessions. Any  
17 information discussed in closed meetings or sessions shall be  
18 treated by the commissioner and his or her designated  
19 representatives as confidential pursuant to the provisions of Section  
20 12919.

21 (k) Records of a *designated* statistical agent that shall be  
22 considered public records and that shall be made available to the  
23 public for purchase for the direct costs of duplication, *either in*  
24 *hard copy or electronic form, at the discretion of the requestor*,  
25 include, but are not limited to, all of the following:

26 ~~(1) Information releases, including bulletins, general notices,~~  
27 ~~all committee meeting agendas, and minutes, except for items~~  
28 ~~expressly excluded by statute, in which case the item shall be~~  
29 ~~generally identified, and the reason for the exclusion expressed in~~  
30 ~~writing.~~

31 ~~(2) Information or materials provided to the department as part~~  
32 ~~of or in support of a rating filing.~~

33 ~~(3) Actuarial assumptions and calculations made in the course~~  
34 ~~of ratemaking.~~

35 ~~(4) Aggregate data, comprised of data from multiple carriers,~~  
36 ~~which is used in the ratemaking process.~~

37 ~~(5) Aggregate data provided to statistical agent members or~~  
38 ~~others, including classification experience data and aggregate~~  
39 ~~payroll data.~~

~~(6) Material made available free on the rating statistical agent's Internet Web site that exists in other forms.~~

~~(1) Bulletins and notices with respect to the issues set forth in paragraph (1) of subdivision (c).~~

~~(2) Agendas and minutes for meetings that are open to the public pursuant to subdivision (c), describing generally, without any identifying information with regard to a specific insurer or employer, the items to be discussed in closed session pursuant to subdivision (g).~~

~~(3) Information or materials provided to the commissioner as part of, or in support of, a rating filing, except when the information relates to a specific insurer or when the commissioner designates the information as confidential.~~

~~(4) Actuarial assumptions and calculations used to support the designated statistical agent's recommendations to any committee with respect to the issues set forth in paragraph (1) of subdivision (c).~~

~~(5) Summaries of aggregate data, comprised of data from multiple carriers, which are used to support the designated statistical agent's recommendations to any committee with respect to the issues set forth in paragraph (1) of subdivision (c).~~

~~(7)~~  
~~(6) Manuals, plans, and classification information, including codes, materials, books, manuals, or pamphlets, that outline or delineate the rules or regulations of the workers' compensation system, with respect to issues set forth in paragraph (1) of subdivision (c).~~

~~(8) Studies or reports created as a result of statute or request of the department, the Legislature, or any other governmental body, except to the extent that the department designates a requested report or study as nonpublic.~~

~~(9) Materials used in classes or training for licensees of the department or the public.~~

~~(f) All of the following information, if applicable based on the facts of the particular case, in the possession of a statistical agent shall not be considered a public record:~~

~~(1) Aggregate data from an individual insurer.~~

~~(7) Studies or reports created as a result of a statute or at the request of the commissioner or Legislature, except to the extent that the commissioner designates a requested report or study as~~



1 *being confidential or it includes information that is specific to a*  
2 *single insurer or employer.*

3 *(l) The designated statistical agent shall not be required to make*  
4 *available to the public any personal, proprietary, confidential, or*  
5 *trade secret information in its possession, including, but not limited*  
6 *to:*

7 *(1) Data, including aggregate data, submitted by an individual*  
8 *insurer.*

9 *(2) Claims, employers, or policies data relating to individual*  
10 *claims.*

11 *(3) Payroll data relating to an individual employer or policy.*

12 *(4) Medical data relating to an individual injured worker,*  
13 *employer, or policy.*

14 ~~*(4)*~~

15 *(5) Data relating to active investigations by the designated*  
16 *statistical agent of a member or members initiated by the statistical*  
17 *agent, the commissioner, or other law enforcement agency, unless*  
18 *authorized by the commissioner.*

19 *SEC. 2. Section 11752.7 of the Insurance Code is amended to*  
20 *read:*

21 *11752.7. (a) A licensed rating organization may make available*  
22 *experience rating information contained in its records to any insurer*  
23 *admitted to transact workers' compensation insurance in this state*  
24 *or to any insurance agent or broker that is licensed to transact*  
25 *workers' compensation insurance in this state, if the insurer, agent,*  
26 *or broker submits a written request to the licensed rating*  
27 *organization stating all of the following:*

28 *(1) The requesting insurer is admitted to transact workers'*  
29 *compensation insurance in this state or that the requesting agent*  
30 *or broker is licensed to transact workers' compensation insurance*  
31 *in this state.*

32 *(2) The information requested.*

33 *(3) The information requested will be used to facilitate the*  
34 *transaction of workers' compensation insurance by the insurer,*  
35 *agent, or broker.*

36 *(4) The information received will not be released by the agent*  
37 *or broker to others, except to facilitate the transaction of workers'*  
38 *compensation insurance by the requesting agent or broker.*

39 *(b) The licensed rating organization may, but shall not be*  
40 *required to, verify that an insurer requesting information under*

1 this section is admitted to transact workers' compensation insurance  
2 in this state or that an insurance agent or broker requesting  
3 information under this section is licensed to transact workers'  
4 compensation insurance in this state.

5 (c) For purposes of this section:

6 (1) "Experience rating information" means information released  
7 on microfiche, at an Internet Web site or other electronic format,  
8 or in other forms or media by a licensed rating organization that  
9 identifies all experience-rated employers, and the experience ratings  
10 and classifications or experience modifications that apply or applied  
11 to those employers.

12 (2) "Transaction," as applied to workers' compensation  
13 insurance, includes any of the following:

14 (A) Solicitation.

15 (B) Negotiations preliminary to execution of a contract of  
16 insurance.

17 (C) Execution of a contract of insurance.

18 (D) Resolution of matters arising out of the contract and  
19 subsequent to its execution.

20 (d) Experience rating information made available pursuant to  
21 this section shall be confidential and shall not be used for any  
22 purpose other than to facilitate the transaction of workers'  
23 compensation insurance by the insurer, agent, or broker receiving  
24 the information pursuant to this section.

25 (e) (1) Notwithstanding any other provision of law, including  
26 this section, a licensed rating organization ~~may~~ *shall* not enter into  
27 a contract or other agreement, including its constitution, articles  
28 of incorporation, or bylaws that prohibits information services  
29 companies in the business of publishing or providing experience  
30 rating information immediately prior to September 15, 1989, from  
31 continuing on or after September 15, 1989, to receive and provide  
32 to others experience rating information from whatever sources and  
33 in whatever forms or media. *Upon request, a rating organization*  
34 *shall provide experience rating information, by electronic means,*  
35 *directly to information services providers described in this*  
36 *paragraph, or to advisory organizations as defined in subdivision*  
37 *(e) of Section 11750.1, on a timely basis, consistent with its own*  
38 *releases or updates. A rating organization shall provide this*  
39 *information at a cost no greater than the direct cost of duplication.*

1     (2) *A licensed rating organization shall make experience rating*  
2 *information contained in its records available to any information*  
3 *services company that is engaged in furnishing workers'*  
4 *compensation information to insurers admitted to transact workers'*  
5 *compensation insurance in this state or to insurance agents or*  
6 *brokers licensed to transact workers' compensation insurance in*  
7 *this state. The licensed rating organization shall provide this*  
8 *information to the information services company by electronic or*  
9 *other means, if the information services company submits a written*  
10 *statement to the licensed rating organization stating all of the*  
11 *following:*

12     (A) *The information services company is engaged in furnishing*  
13 *information to workers compensation insurers admitted to transact*  
14 *workers' compensation insurance in this state or to insurance*  
15 *agents or brokers licensed to transact workers' compensation*  
16 *insurance in this state.*

17     (B) *The information requested.*

18     (C) *The information services company shall furnish any*  
19 *information provided by the licensed rating organization, including*  
20 *experience rating information, only to insurers, brokers, or agents,*  
21 *for the purpose of transacting workers' compensation insurance*  
22 *in this state.*

23     (3) *The information services company shall notify the licensed*  
24 *rating organization within 20 days of the date on which it ceases*  
25 *or withdraws from furnishing experience rating information to*  
26 *insurers, agents, or brokers transacting workers' compensation*  
27 *insurance in this state.*

28     (f) *No licensed rating organization, member of a licensed rating*  
29 *organization, member of a committee of a licensed rating*  
30 *organization when acting in its capacity as a member of the*  
31 *committee, or officer or employee of a licensed rating organization*  
32 *when acting within the scope of his or her employment, shall be*  
33 *liable to any person for injury, personal or otherwise, or damages*  
34 *caused or alleged to have been caused, either directly or indirectly,*  
35 *by the disclosure of information pursuant to this section, or to the*  
36 *members of those organizations, or for the accuracy or*  
37 *completeness of the information disclosed.*

38     (g) *This section shall not be construed as implying the existence*  
39 *of liability in circumstances not defined in this section, nor as*  
40 *implying a legislative recognition that, except for the enactment*

1 of this section, a liability has existed or would exist in the  
2 circumstances stated in this section.

3 (h) This section shall not be construed as limiting any authority  
4 of a licensed rating organization to disclose information contained  
5 in its records to others.

O